

PS6010.01 PSYCHIATRIC TREATMENT/MEDICATION, ADMIN SAFEGUARDS



U.S. Department of Justice
Federal Bureau of Prisons

Program

OPI: HSD
NUMBER: 6010.01
DATE: September 21, 1995
SUBJECT: Psychiatric Treatment and
Medication, Administrative
Safeguards for

Statement

EFFECTIVE DATE: September 25, 1995

1. PURPOSE AND SCOPE. To provide administrative safeguards for psychiatric treatment and medication, for both voluntary and involuntary admissions to mental health facilities.

2. PROGRAM OBJECTIVES. The expected results of this program are:

a. Psychotropic medications will be administered only when there is a diagnosable psychiatric disorder or symptomatic behavior for which such medication is accepted treatment.

b. Every inmate who voluntarily admits himself or herself for psychiatric treatment or voluntarily takes psychotropic medication will be properly informed of his or her rights, and his or her competence to give consent will be properly documented.

c. Except for psychiatric emergencies, proper due process procedures will be provided to every involuntarily hospitalized inmate before psychiatric treatment, including psychotropic medication, is administered.

d. During a psychiatric emergency, appropriate psychotropic medication will be administered only when less restrictive alternatives are not available or indicated, or would not be effective. When clinically possible, long-acting psychotropic medications will be avoided.

e. For any person not covered by sections 4241 through 4247 of Title 18 U.S.C., any decision to admit that person for psychiatric treatment will be made at an administrative hearing that meets the requirements of Vitek v. Jones.

[Bracketed Bold - Rules]

Regular Type - Implementing Information

3. DIRECTIVES AFFECTED

a. Directives Rescinded. None.

b. Directives Referenced.

P.S. 5212.06 Control Unit Program (08/29/95)
P.S. 5310.12 Psychology Services Manual (08/13/93)
P.S. 5310.13 Mentally Ill Inmates, Institution Management
of (03/31/95)
P.S. 6000.04 Health Services Manual (12/15/94)

c. Rules cited in this Program Statement are contained in 28 CFR 549.40-43.

4. STANDARDS REFERENCED

a. American Correctional Association Foundation/Core Standards for Adult Correctional Institutions: C2-4158, C2-4164, 2-4322-1.

b. American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: 3-4342, 3-4372, 3-4342-1.

c. American Correctional Association Foundation/Core Standards for Adult Local Detention Facilities: FC2-5085.

d. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-4E-18, 3-ALDF-4E-43(M), 3-ALDF-4E-18-1.

e. American Correctional Association 2nd Edition Standards for Administration of Correctional Agencies: 2-CO-4E-01.

5. [USE OF PSYCHOTROPIC MEDICATIONS §549.40. Psychotropic medication is to be used only for a diagnosable psychiatric disorder or symptomatic behavior for which such medication is accepted treatment.]

Psychotropic medication is generally not designed for, nor shall it be used as, a method of chemical control for behaviors unrelated to mental illness. Psychotropic medication may be administered on a voluntary basis for a medical purpose other than treatment of a psychiatric disorder, i.e., Hansen's disease, for which appropriate medical treatment includes drugs classified as psychotropic. Psychotropic medication is medication prescribed by a physician specifically for mood-altering, mind-altering, or impulse control purposes. This does not include sleeping medication or minor tranquilizers.

6. [VOLUNTARY ADMISSION AND PSYCHOTROPIC MEDICATION §549.41]

a. A sentenced inmate may be voluntarily admitted for psychiatric treatment and medication when, in the professional judgment of qualified health personnel, such inmate would benefit

from such treatment and demonstrates the ability to give informed consent to such admission. The assessment of the inmate's ability to give informed consent will be documented in the individual's medical record by qualified health personnel.]

See Section 8.c., Exceptions, for procedures for military prisoners, unsentenced Immigration and Naturalization Service (INS) detainees, unsentenced prisoners in Bureau custody as a result of a court order, state of territorial prisoners, and District of Columbia offenders.

To make this assessment, staff must determine whether the person understands the reasons for admission, the recommended treatment, his or her right to object to treatment at any time, and the means by which he or she may object. This documentation shall be in addition to the Consent of Admission Form, and will be made on BP-358 (60), Medical Treatment Refusal.

[b. If an inmate is to receive psychotropic medications voluntarily, his or her informed consent must be obtained, and his or her ability to give such consent must be documented in the medical record by qualified health personnel.]

The medical record must include documentation that, prior to giving written consent, the inmate understood why the medication was deemed necessary, how the medication could improve his or her condition, possible side effects, the consequences of not take the medication, and any alternative forms of treatment and their risks.

7. [INVOLUNTARY ADMISSION §549.42. A court determination is necessary for involuntary hospitalization for psychiatric treatment. A sentenced inmate, not currently committed for psychiatric treatment, who is not able or willing to voluntarily consent either to psychiatric admission or to medication, is subject to judicial involuntary commitment procedures. Even after an inmate is involuntarily committed, staff shall follow the administrative due process procedures specified in §549.43 of this subpart.]

§549.43 of this subpart refers to Section 8 of this Program Statement.

8. [INVOLUNTARY PSYCHIATRIC TREATMENT AND MEDICATION §549.43. Title 18 U.S.C. sections 4241-4247 and Federal court decisions require that certain procedures be followed prior to the involuntary administration of psychiatric treatment and medication to persons in the custody of the Attorney General. Court commitment for hospitalization provides the judicial due process hearing, and no further judicial authorization is needed for the admission decision. However, in order to administer treatment or psychotropic medication on an involuntary basis, further administrative due process procedures, as specified in this section, must be provided to the inmate. Except as provided

for in paragraph (b) of this section, the procedures outlined herein must be followed after a person is committed for hospitalization and prior to administering involuntary treatment, including medication.]

Title 18 U.S.C. section 4241(d) provides for hospitalization and treatment of individuals found to be suffering from a mental disease or defect which renders them mentally incompetent to stand trial. At an administrative hearing which must be conducted by a psychiatrist in accordance with established hearing procedures (see Section 8.a.), a determination must be made that psychotropic medication is necessary to attempt to make this individual competent for trial or because the individual is dangerous to self or others, is gravely disabled, or is unable to function in the open population of a Bureau Psychiatric Referral Center. An inmate committed for evaluation under §4241(b) or §4242(a) should not be involuntarily treated in a non-emergency situation in the absence of a court order or without documented approval of the committing judge.

Title 18 U.S.C. sections 4243 and 4246 provide for the hospitalization and treatment of a person found not guilty only by reason of insanity and of a person due for release but suffering from a mental disease or defect. Section 4246 cases refer to those inmates who are retained after release or are due for release and are suffering from a mental disease or defect and their release would cause substantial risk of bodily injury to another person or serious damage to the property of another.

Title 18 U.S.C. sections 4244 and 4245 provide for the hospitalization and treatment of convicted and imprisoned persons suffering from a mental disease or defect. Hospitalization follows a court determination that the person may be suffering from a mental disease or defect for the treatment of which he/she needs custody in a suitable facility. After commitment, psychotropic medication may be involuntarily administered if the individual does not give informed consent, and if a determination is made at the hearing (specified in section 8), that the individual needs medication to treat the mental illness and the individual is dangerous to self or others, or is gravely disabled. With respect to a 18 U.S.C. § 4244(d) commitment, staff may also involuntarily medicate an individual who is unable to adequately function in the general population of a medical referral center, or to enable him to be returned to court for final sentencing. If and when a 4244(d) inmate is returned to court for final sentencing while being treated involuntarily, the court must be apprised of the limited nature of the inmate's recovery evidenced by the course of treatment. With respect to an 18 U.S.C. 4245 commitment, staff may involuntarily medicate an individual unable to function in the open population of a medical referral center, subject to due process requirements of subsection a. below.

[a. Procedures. When an inmate will not or cannot provide voluntary written informed consent for psychotropic medication, the inmate will be scheduled for an administrative hearing. Absent an emergency situation, the inmate will not be medicated prior to the hearing. In regard to the hearing, the inmate will be given the following procedural safeguards:

(1) Staff shall provide 24-hour advance written notice of the date, time, place, and purpose of the hearing, including the reasons for the medication proposal.]

The notice must advise the inmate that, as a result of the specific diagnosis and the court commitment, psychotropic medication has been proposed.

[(2) Staff shall inform the inmate of the right to appear at the hearing, to present evidence, to have a staff representative, to request witnesses, and to request that witnesses be questioned by the staff representative or by the person conducting the hearing. If the inmate does not request a staff representative, or requests a staff representative with insufficient experience or education, the institution mental health division administrator shall appoint a staff representative. Witnesses should be called if they have information relevant to the inmate's mental condition and/or need for medication, and if they are reasonably available. Witnesses who only have repetitive information need not be called.]

The staff representative should be impartial and able to act in the best interests of the inmate. He/she shall meet with the inmate to help prepare for the hearing and must assist at the hearing in presenting the inmate's position. The staff representative shall also help the inmate prepare and submit an appeal if he/she requests assistance or wishes to appeal but is unable to prepare and submit the appeal.

[(3) The hearing is to be conducted by a psychiatrist who is not currently involved in the diagnosis or treatment of the inmate.

(4) The treating/evaluating psychiatrist/clinician must be present at the hearing and must present clinical data and background information relative to the need for medication. Members of the treating/evaluating team may also attend the hearing.

(5) The psychiatrist conducting the hearing shall determine whether treatment or psychotropic medication is necessary in order to attempt to make the inmate competent for trial or is necessary because the inmate is dangerous to self or others, is gravely disabled, or is unable to function in the open population of a mental health referral center or a regular prison. The psychiatrist shall prepare a written report regarding the decision.] When medication has been administered to make an

inmate competent for trial, staff shall include such information in the report to the court. (see Chapter 7, Section 5 of the Health Services Manual)

[(6) The inmate shall be given a copy of the report and shall be advised that he or she may submit an appeal to the institution mental health division administrator regarding the decision within 24 hours of the decision and that the administrator shall review the decision within 24 hours of the inmate's appeal. The administrator shall ensure that the inmate received all necessary procedural protections and that the justification for involuntary treatment or medication is appropriate. Upon request of the inmate, the staff representative shall assist the inmate in preparing and submitting the appeal.]

(7) If the inmate appeals, absent a psychiatric emergency, medication will not be administered before the administrator's decision. The inmate's appeal, which may be handwritten, must be filed within 24 hours of the inmate's receipt of the decision.

(8) A psychiatrist, other than the attending psychiatrist, shall provide follow-up monitoring of the patient's treatment medication at least once every 30 days after the hearing. The follow-up shall be documented in the medical record.]

Forms for use by the individual conducting the hearing and for providing notice to the inmate are "Notice of Medication Hearing and Advisement of Rights," "Involuntary Medication Report," and "Appeal of Involuntary Medication Decision."

[b. Emergencies. For purpose of this subpart, a psychiatric emergency is defined as one in which a person is suffering from a mental illness which creates an immediate threat of bodily harm to self or others, serious destruction of property, or extreme deterioration of functioning secondary to psychiatric illness. During a psychiatric emergency, psychotropic medication may be administered when the medication constitutes an appropriate treatment for the mental illness and less restrictive alternatives (e.g., seclusion or physical restraint) are not available or indicated, or would not be effective.]

c. Exceptions. Title 18 United States Code, sections 4241 through 4247 do not apply to military prisoners, unsentenced Immigration and Naturalization Service (INS) detainees, unsentenced prisoners in Bureau custody as a result of a court order (e.g., a civil contemnor), state or territorial prisoners, and District of Columbia Code offenders. For those persons not covered by sections 4241-4247, the decision to involuntarily admit the person to the hospital must be made at an administrative hearing meeting the requirements of Vitek v. Jones. The decision to provide involuntary treatment, including medication, shall nonetheless be made at an administrative hearing in compliance with §549.43.]

§549.43 refers to Section 8 of this Program Statement.

Note: The military must provide the Vitek hearing for military prisoners. For procedures regarding State, Territorial, and D.C. Code offenders, see Chapter 7, Section 17 of the Health Services Manual.

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